

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTHONY D. MELBOURNE,

Defendant.

CR 08-150-GF-BMM-JTJ

**AMENDED FINDINGS AND
RECOMMENDATIONS**

I. Synopsis

Defendant Anthony D. Melbourne (Melbourne) has been accused of violating the conditions of his supervised release. Melbourne admitted to alleged violations 1, 2 and 4. Melbourne's supervised release should be revoked. Melbourne should be placed in custody for 9 months, with 50 months of supervised release to follow.

II. Status

Melbourne pleaded guilty to Second Degree Murder on March 17, 2009.

(Doc. 12). The Court sentenced Melbourne to 168 months of custody, followed by 5 years of supervised release. (Doc. 15). Melbourne's current term of supervised release began on December 17, 2019. (Doc. 58 at 1).

Petition

The United States Probation Office filed a Second Amended Petition on July 7, 2020, requesting that the Court revoke Melbourne's supervised release. (Doc.58.) The Petition alleges that Melbourne violated the conditions of his supervised release: 1) by consuming alcohol; 2) by consuming methamphetamine; 3) by communicating or interacting with a known felon; and 4) by failure to participate in substance abuse testing. (Doc. 58 at 3-4).

Initial appearance

Melbourne appeared before Magistrate Judge Kathleen L. DeSoto for his initial appearance on July 8, 2020. Melbourne was represented by counsel. Melbourne stated that he had read the petition and that he understood the allegations. Melbourne waived his right to a preliminary hearing. A revocation hearing was set before the undersigned.

Revocation hearing

The Court conducted a revocation hearing on July 16, 2020. Melbourne admitted that he had violated the conditions of his supervised release: 1) by

consuming alcohol on five different occasions; 2) by consuming methamphetamine; and 4) by failure to participate in substance abuse testing. The government could not meet the burden of proof with regards to alleged violation No. 3. (Doc. 63.) The violations that Melbourne admitted to are serious and warrant revocation of Melbourne's supervised release.

Melbourne's violations are Grade C violations. Melbourne's criminal history category is VI. Melbourne's underlying offense is a Class A felony. Melbourne could be incarcerated for up to 60 months. Melbourne could be ordered to remain on supervised release for up to 59 months, less any custody time imposed. The United States Sentencing Guidelines call for a term of custody of 6 to 9 months.

III. Analysis

Melbourne's supervised release should be revoked. Melbourne should be incarcerated for 9 months, with 50 months of supervised release to follow. The supervised release conditions imposed previously should be continued. This sentence is sufficient but not greater than necessary.

IV. Conclusion

The Court informed Melbourne that the above sentence would be recommended to United States District Judge Brian Morris. The Court also

informed Melbourne of his right to object to these Findings and Recommendations within 14 days of their issuance. The Court explained to Melbourne that Judge Morris would consider a timely objection before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose. Melbourne stated that he wished to waive his right to object to these Findings and Recommendations, and that he wished to waive his right to allocute before Judge Morris.

The Court **FINDS:**

That Anthony D. Melbourne violated the conditions of his supervised release: 1) by consuming alcohol; 2) by consuming methamphetamine; and 4) by failure to participate in substance abuse testing.

The Court **RECOMMENDS:**

That the District Court revoke Melbourne's supervised release and commit Melbourne to the custody of the United States Bureau of Prisons for 9 months, with 50 months of supervised release to follow.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district court judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district court judge may accept, reject, or modify, in

whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district court judge, and may waive the right to appear and allocute before a district court judge.

DATED this 21st day of July, 2020.



John Johnston
United States Magistrate Judge